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Remarks

The rejection under 35 U.S.C. 112(2) is not understood. However, Claim 1 is amended in order to clarify the relationship between the flat pile and the slot and the novel structure of a flat pile with parts tensioned to spring outwardly against the walls of the slot. The amended claim is believed to clearly obviate the rejection especially under the law concerning 35 U.S.C. 112(2) which requires only that the language of the claim be sufficiently clear so that the scope of the claim is discernable, Ex parte Wu, 10 USPQ2d, 2031 (PTBAI 1989). In other words, that the claim would be understood by one skilled in the art, In re Marosi et al., 218 USPQ 289, 292 (Fed. Cir. 1983); Seattle Box Co., Inc. v. Industrial Crating & Packing, Inc., 221 USPQ 568, 574 (Fed. Cir. 1984) and Ex parte Hradcovsky et al., 214 USPQ 554 (PTBA 1982).

The rejection of the claims on Johnson '390 and Johnson '487 patent is believed to be based on an interpretation of these patents and an interpretation of the claims, particularly Claim 1, which are inconsistent with the specifications of these patents and this application. It is well accepted in patent jurisprudence concerning claim interpretation, that a claim is given the broadest reasonable interpretation, but one that is not inconsistent or flies in the face of what is the meaning of the patent or the claim as expressed in the specifications. In other words, the law requires an interpretation of references and claims consistent with the specifications from which they are derived. Ex parte Research and Manufacturing Co., Inc., 10 USPQ2d, 1657 (PTBAI 1989), and In re Bond, 15 USPQ2d, 1566 (Fed. Cir. 1990).

The Examiner's interpretation of the references relied upon is expressed in paragraphs 12 and 15 of the Office Action dated October 4, 2002. This interpretation is respectfully submitted to be inconsistent with what is described in the references and will be apparent from actual product made in accordance with the Johnson '390 patent. As to the actual product, accompanying this response and a part hereof, is a Declaration from one of the inventors containing samples of pile weatherstripping made in accordance with the Johnson '390 patent. First, as regards the Johnson '390 patent, one must distinguish the backing strip 32 which has no part in the sealing action and fins inside or outside the upstanding pile, which fins deal with the sealing action, as explained in the paragraphs starting on line 10 and line 26 of column 1 of the Johnson '390 patent.

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The Johnson '390 patent incorporates U.S. Patent No. 4,302,494 (Horton), which describes the basic mandrel formed weatherstripping and points out that because of the flanges in the backing strips, the yarn is not flat but is upright (see paragraph starting on line 37 of column 4 of the Horton patent).

This upright pile is certainly not flat in the case of the Johnson '390 patent because of the tendency of the sides of the pile to be upright rather than flat, it is necessary to use wires to raise the strands so as to enable them to be cut into two piles and removed from the mandrel. This is clearly set forth in the paragraph starting on line 44 of column 4 of the Johnson '390 patent. As far as the Johnson '404 patent is concerned, the Examiner will note that the piles are made to stand upright and not lie flat. This is expressly stated in the Johnson '404 patent, in column 2, at lines 61 and 62. A flat pile is simply not obvious from that described in these two patents. The claims and the specification of this application clearly define a flat pile where the strands are flat as they extend longitudinally. The tension and resiliency of the claimed strands is set forth as providing for the flat pile. Any interpretation of these patents as constituting a flat pile or of the claims as including within their scope a pile which is maintained upright is inconsistent and flies in the face of the specifications of these patents and the present application.

Further, there is no basis for the statement in the sentence bridging pages 4 and 5 of the Office Action dated October 4, 2002 that the fins if removed would allow the pile to spring outwardly into a flattened shape. An examination of the specifications of the Examiner's cited references makes this quite impossible. The samples attached to the Declaration also show the impossibility of this construction of the references.

As far as the manufacture of the pile as described in the Examiner's cited references, it is respectfully submitted that this description is entirely relevant in determining whether the references disclose a flat pile, as contended by the Examiner. The Examiner's contention is respectfully submitted not to be well taken from the descriptions of the methods of manufacture of the pile in the references, especially as discussed above.

The Examiner is respectfully submitted to have misconstrued the claim as such construction is expressed in paragraph 11 of the Office Action of October 4, 2002. The

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claim clearly states that the resiliency of the parts of the flat pile which are tensioned so as to remain flat provides for the holding relationship of the pile in the slot. The claim expressly says that the portions of the pile formed by bending the flat pile upon insertion into the slot causes these parts of the pile to engage the steps in the throat and hold the pile bent and in the slot. The use of the so-called fin element 18 is merely an auxiliary snap-in holding device. The principal holding mechanism claimed in Claim 1 is the pile itself.

There is no basis in the references that the fins in Johnson '390 patent are tensioned and tend to hold the pile flat, and the Examiner has not cited any basis for this contention as set forth in paragraph 13 of the Office Action.

Insofar as the foreign references are concerned, they merely relate to elastic bulb seals and not to pile weatherstripping. The present invention relates to pile weatherstripping which is a different type of weatherstripping and serves a different market. The present application and the claimed invention relate only to pile weatherstripping. Accordingly, these foreign references are respectfully submitted to be nonanalogous as not relating to pile weatherstripping "problems" to which the Examiner refers in paragraph 14 of the Office Action.

The Examiner's construction of the Johnson '390 and '487 patents is respectfully submitted to be in error in that comparing fins to backing strips is not justified by anything in the references. The use of a backing strip, to provide the means for retaining the weatherstripping in the slot, is the sole and only showing and disclosure in the Johnson patents. These references simply do not contemplate a flat pile tensioned so as to provide resiliency and enable the weatherstripping to be retained in the slot by virtue of the spring tension in the pile itself. The same comments are applicable to paragraph 16 of the Office Action.

Inasmuch as the Examiner's cited references do not suggest a flat pile or the use of a flat pile as claimed to provide pile weatherstripping, the contentions of the Examiner in the other paragraphs of the Office Action are respectfully submitted not to be applicable for reasons set forth above.

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Favorable action upon further examination is respectfully solicited. Enclosed with this response is a set of formal drawings to obviate the official draftsman's objection.

It is believed that this application is in condition for allowance and an early notice of such allowance is respectfully solicited.

Respectfully submitted,

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Martin LuKacher  
Attorney for Applicants  
Registration No. 17,788

South Winton Court  
3136 Winton Road South, Suite 204  
Rochester, New York 14623  
Telephone: (585) 424-2670  
Facsimile: (585) 424-6196

Enclosures: Declaration of David N. Hawkins  
Four sheets of formal drawings

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APPENDIX

Marked-up version of Amended Claim 1.

1. (twice amended) A pile weatherstrip which forms a flexible seal projecting from a member when received in a holding slot extending longitudinally along the member, the slot having a throat which defines steps along opposite edges of the throat internally of the slot, said weatherstrip comprising a plurality of strands in side-by-side relationship, which said strands have resiliency to straighten thereby defining and maintaining said strands in a flat pile, which flat pile also extends longitudinally, said pile weatherstripping being formed with [a flat pile of strands which extend longitudinally,] said flat pile being disposed in said slot bent upwardly along an axis also extending longitudinally of said slot and across said strands, and dividing said strands into separate parts tensioned to spring outwardly against said steps into holding relationship therewith, said holding relationship being provided by[,] portions of said parts being disposed internally of said slot engaging said steps to hold said bent flat pile in said slot, exterior portions of said parts extending outwardly of said slot to define said flexible seal.